

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1320

Cir. Ct. No. 2012CV556

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

MELVIN SHELTON,

PLAINTIFF-APPELLANT,

V.

THE HONORABLE MICHAEL D. GUOLEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Melvin Shelton, *pro se*, appeals the circuit court's order dismissing his civil rights action brought pursuant to 42 U.S.C. § 1983. The issue is whether the circuit court properly dismissed the action. We conclude that it did. Therefore, we affirm.

¶2 Shelton was convicted of a crime in 1987 and sentenced to an indeterminate term of not more than twenty years in prison. In 2012, Shelton brought this action against the sentencing judge, the Honorable Michael D. Goulee, arguing that he violated Shelton's civil rights when he sentenced Shelton because there was no probable cause to support the underlying arrest warrant. Shelton sought \$55,000 in compensatory damages and \$3,000 in punitive damages. The circuit court dismissed the action. Shelton appeals.

¶3 Shelton's action is barred for four reasons. First, the action is barred by the doctrine of judicial immunity. Judges are absolutely immune from civil suits for damages for their judicial acts. See *Stump v. Sparkman*, 435 U.S. 349, 355 (1978). Judicial immunity is based on "a general principle of the highest importance to the proper administration of justice" that a judge exercising the authority invested in him or her should "be free to act upon his [or her] own convictions, without apprehension of personal consequences." *Id.* (citation and quotation marks omitted). Judge Goulee's sentencing of Shelton was a judicial act. Judge Goulee is therefore immune from suit for sentencing Shelton.

¶4 Second, Shelton's action is barred by the doctrine of public officer immunity. The general rule is that public officers are immune from civil liability for damages resulting from their discretionary acts. See *Lister v. Board of Regents*, 72 Wis. 2d 282, 300-01, 240 N.W.2d 610 (1976). Sentencing is a discretionary act. See *State v. Gallion*, 2004 WI 42, ¶37, 270 Wis. 2d 535, 678 N.W.2d 197. Judge Goulee is thus immune from suit for sentencing Shelton because he was a public officer performing a discretionary act.

¶5 Third, Shelton's action is barred by the statute of limitations. There is a six-year statute of limitations for bringing a civil rights action under 42 U.S.C.

§ 1983. See *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989). Shelton commenced this action twenty-five years after he was convicted and sentenced, well beyond the six-year statute of limitations. His action is therefore barred by the six-year statute of limitations.

¶6 Finally, Shelton’s action is barred because he has failed to state a claim upon which relief can be granted. “We review a circuit court’s grant of a motion to dismiss for failure to state a claim without deference.” *Abbott v. Marker*, 2006 WI App 174, ¶5, 295 Wis. 2d 636, 722 N.W.2d 162. “We evaluate whether the allegations in the complaint, taken as true, are legally sufficient to state a claim for relief.” *Id.* Assuming that Shelton’s underlying arrest warrant was invalid, Shelton has provided no legal basis for his claim that his conviction should be expunged and he should be awarded damages. Shelton has therefore failed to state a claim upon which relief can be granted.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

